

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 CHARLES STEWART,

8 Defendant.

Case No. 2:16-cr-0275-APG-VCF

ORDER

(ECF No. 25)

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10 Defendant Charles Stewart moves for an order modifying the sentence I imposed on him in
11 this case so that it runs concurrent with his subsequently imposed state court sentence. ECF No. 25.
12 The Government contends that I do not have “supervisory power” to modify the term of
13 imprisonment, citing 18 U.S.C. § 3582(c). However, the Government does not oppose treating
14 Stewart’s motion as a motion under 28 U.S.C. § 2255 conceding ineffective assistance of counsel,
15 which would allow me to enter the relief requested. Stewart’s counsel has not replied to the
16 Government’s argument, which I take to be a consent to that remedy.

17 The Government concedes that, had Stewart requested that his federal sentence be made to
18 run concurrently with his state court sentence, the Government would not have opposed. ECF No.
19 26 at 5. Thus, justice dictates that I accept the Government’s suggested mechanism to accomplish
20 that result. I thus treat Stewart’s motion as a § 2255 motion to resentence Stewart to the same
21 sentence (56 months) but run concurrent to his state court sentence. I grant that motion.

22 IT IS HEREBY ORDERED that Stewart’s motion (ECF No. 25) is recharacterized as a
23 § 2255 motion and is GRANTED. Stewart’s original sentence is vacated, and he is now sentenced
24 to 56 months’ custody, to be served concurrently with the sentence imposed in Nevada state court

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1 case number C-17-321504-1. The other terms of the sentence and Judgment are reinstated. A new
2 Judgment will be entered separately.

3 Dated: October 10, 2017.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE